EXHIBIT 2

United States District Court, N.D. California.

ANGOSS II PARTNERSHIP, Angoss Software International (USA), Inc., and Angoss Software International, Ltd., Plaintiffs,
v.
TRIFOX, INC., Defendant.

No. C 98-1459 SI.

March 13, 2000.

ORDER CERTIFYING JUDGMENT IN FAVOR OF PLAINTIFF AS FINAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 54(b)

JENKINS, J.

***1** This Court heard oral argument on this motion on March 10, 2000. Having carefully considered the papers submitted and the argument of the parties, the Court GRANTS plaintiffs' motion for certification of judgment pursuant to Federal Rule of Civil Procedure 54(b).

INTRODUCTION

1. Factual History

Plaintiffs filed suit in 1995 against defendant Trifox in Ontario, Canada alleging breach of contract. *See Angoss II Partnership, et. al. v. Trifox, Inc.*, Court File 95-CU-86750. Plaintiffs' claim arose from a contract under which plaintiffs agreed to purchase software products from the defendant. The suit alleged that defendant's products could not be utilized to build computer applications and that installation of the products was impossible. The trial on the Canadian breach of contract claim commenced in 1997. The Canadian court found in favor of plaintiffs in December 1997 and ordered the defendant to pay $4,918,065 (Canadian). *See* Def. Opposition to Rule 54(b) Motion, Ex. A. That decision also held that plaintiffs "have no right, title or interest of any nature or kind in [defendant's products]." *Id.* The defendant filed a notice of appeal of the judgment; on October 19, 1999 the appeal was denied.

2. Procedural History

On April 9, 1998, plaintiffs filed a complaint in the Northern District of California seeking recognition of the Canadian judgment by this Court. On July 21, 1998 the Court issued an order granting summary judgment on plaintiffs' claims. However, the Court simultaneously stayed enforcement of that order pending appeal of the Canadian judgment. On September 17, 1998, defendant filed counterclaims for copyright and trademark infringement founded upon alleged actions performed by plaintiffs after the entry of the Canadian judgment. On April 2, 1999 the Court stayed proceedings on defendant's counterclaims. On January 6, 2000, the Court lifted those stays for the sole purpose of filing the present Rule 54(b) motion.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 54(b),

> [w]hen more than one claim for relief is presented in an action, ... or when multiple parties are involved, the court may direct entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for the delay ...

Fed.R.Civ.P. 54(b). A ruling is final, and therefore appealable "if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment' " as to that party or claim. *Arizona State Carpenters Pension Trust Fund v. Miller*, 938 F.2d 1038, 1039 (9th Cir.1991) (*quoting Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 275 (1988)). "The Rule 54(b) claims do not have to be separate from and independent of the remaining claims." *Sheehan v. Atlanta Int'l Ins. Co.*, 812 F.2d 465, 468 (9th Cir.1987). Rule 54(b) certification is left to the sound discretion of the district court, and certification is proper if it aids in expeditious resolution of the case while avoiding piecemeal appeals. *See Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1484 (9th Cir.1993).

***2** Rule 54(b) was enacted to counter the "liberalization of our practice to allow more issues and parties to be joined in one action ." *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511 (1950). Accordingly, "the trend is towards greater deference to a district court's decision to certify under Rule 54(b)." *See Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 798 (9th Cir.1991) (citations omitted). In making its decision, a district court should adopt "a pragmatic approach focusing on severability and efficient judicial administration." *See Continental Airlines v. Goodyear Tire & Rubber Co.*, 819 F.2d 1519, 152 (9th Cir.1987).

DISCUSSION

In their motion, plaintiffs argue that there is no just reason to delay entry of judgment under Rule 54(b). They further assert that concerns of equity and judicial economy weigh in favor of granting such judgment. Defendant opposes this motion and contends that plaintiffs have not made a substantial showing to warrant the Rule 54(b) judgment. Defendant further asserts that equity will be served by denying a Rule 54(b) judgment because, *inter alia*, plaintiffs are responsible for the delays in this case.

In order to grant a Rule 54(b) motion, a court must first determine if Rule 54(b) is applicable to the proceedings. First, there must be an action involving multiple claims for relief. *See Liberty Mutual Ins. Co. v. Wetzel*, 424 U.S. 737, 96 S.Ct. 1202 (1976). Here, defendant's counterclaims satisfy this requirement. Second, there must be a final decision by the district court on at least one claim. *See Bank of Lincolnwood v. Federal Leasing, Inc.*, 622 F.2d 944, 947 (7th Cir.1980). The Court's July 21, 1998 summary judgment order is sufficient to fulfill this requirement. If a court finds these two factors present, the court must expressly determine that there is no just reason for the delay, and must expressly direct the entry of judgment. *See id.*

In determining whether there are just reasons for a delay, the district court "must take into account judicial administrative interests as well as equities involved." *See Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 8, 100 S.Ct. 1460, 1465 (1980). When considering judicial interests, the Court must determine "whether the claims under review [are] separable from the others remaining to be adjudicated and whether the nature of the claims already determined was such that no appellate court would have to decide the same issues more than once." *Id.* at 1465. Equitable factors considered by the Court include, but are not limited to, (1) the prejudgment interest rate, (2) the liquidity of the debts at issue, (3) the threat of either party becoming insolvent, (4) the possibility that counterclaims will create setoffs against the judgment. *See id.* at 1466-67. In *Curtiss-Wright*, the Court expressly rejected the rule that Rule 54(b) motions should be reserved for "the infrequent harsh case." *Id.* at 1465.

1. Judicial Economy

***3** Judicial economy calls for entry of final judgment on plaintiffs' claim. Plaintiffs' claim and defendant's counterclaims have few factual allegations in common. [FN2] Plaintiffs' claim arises out of a breach of a Canadian contract entered into in 1993, and contested in 1995. The alleged facts that give rise to defendant's counterclaim for trademark and copyright infringement did not occur until 1997. [FN3] Further, defendant's counterclaim alleges actions taken by plaintiffs in California, not Canada. This Court granted summary judgment solely on the Canadian decision in the breach of contract action.

FN2. In this Court's Order Granting Leave to File Counterclaims ("Order"), the Court held that "[t]he counterclaims defendant seeks to file are independent of the rights associated with contract." Order at 3.

FN3. The Order further states, "the alleged infringement did not occur until after the Canadian court entered judgment." Order at 2.

Therefore, any facts that support summary judgment on the plaintiffs' claim are distinct in time and place from defendant's counterclaims. Because these facts are severable, judicial economy calls for entry of judgment pursuant to Rule 54(b). This analysis "depends not on whether there are any facts in common between the adjudicated and the unadjudicated claim, but rather whether the factual issues 'at the heart' of the claims are sufficiently distinct." *Prudential Ins. Co. v. Curt Bullock Builders, inc.*, 626 F.Supp. 159, 169 (D.Ill.1985); *see also W.L. Gore & Assoc. v. Int'l Medical Prosthetics Research Assoc., Inc.*, 975 F.2d 858, 864 (Fed.Cir.1992). Further, because defendant's counterclaim for trademark and copyright infringement arose out of completely separate facts, an appellate court would not have to review defendant's breach of contract more than once.

2. Equitable Concerns

"[T]he district court should feel free to consider any factor that seems relevant to a particular action, keeping in mind the policies the rule attempts to promote." *Bank of Lincolnwood*, 622 F.2d at 949. In this case, each party raises various equitable concerns which relate to the Rule 54(b) motion. At the outset, the Court concludes that there is no authority to support defendant's contention that a showing of substantial hardship is required to justify a Rule 54(b) judgment.

Defendant argues that plaintiffs have caused the delays in this case and, were it not for plaintiffs' own request for a stay, the present Rule 54(b) motion would be unnecessary. The Court does not agree. The cause for the current stay of plaintiffs' action is defendant's appeal of the Canadian court's judgment. Plaintiffs did file, and were granted, a stay on defendant's counterclaims. However, such a stay was reasonable given that plaintiffs' claim had been stayed per defendant's request. Both parties have contributed to the delays in this case. The defendant's attempt to place blame solely on the plaintiffs is incorrect.

Plaintiffs argue that by not certifying the judgment, their ability ultimately to collect is prejudiced. They further claim that defendant is in a precarious financial situation. This contention is supported by defendant's actions. Defendant claims that if judgment is entered, it may be forced into bankruptcy or rendered financially incapable of litigating its counterclaims. In *Bank of Lincolnwood*, the Seventh Circuit held that this fact "is more relevant to whether the trial court should stay enforcement of the judgment" and further held that this circumstance alone does not warrant denial of a Rule 54(b) motion. 622 F.2d at 949, n. 8. By its own admission, defendant's financial instability has forced defendant to reduce production and development of its products. *See* Decl. of Nicklas Back, § § 1, 5. Therefore, there is considerable merit in the plaintiffs' contention that any further delay in judgment might impair their ability to collect. There would be considerable prejudice to plaintiffs if entry of judgment were denied.

*4 Plaintiffs further argue that the debts at issue are considerably liquidated, which supports certification. The amount of the judgment was explicitly stated in the Canadian court's decision and that amount has been converted into American dollars. Canadian courts grant an automatic stay of enforcement pending the first appeal. However, the Canadian appellate court has rejected defendant's appeal, and the stay of judgment in Canada has been lifted. Therefore, the Court agrees with plaintiffs that the debts are liquidated, and thus ripe for payment.

A final equitable concern to be considered is the potential that success of defendant's counterclaims may create a setoff against plaintiffs' judgment. While this is not an insignificant factor, the possibility of a setoff is not substantial enough to reserve entry of judgment. *See Curtiss-Wright*, 100 S.Ct. at 1467. Additionally, the Court notes that the defendant argues that only a setoff might result from the counterclaims, as opposed to a complete dissolution of plaintiffs' judgment. Therefore, even if judgment were reserved until all claims were resolved, plaintiffs would still be entitled to collect from defendant. This weighs in favor of entering judgment due to the aforementioned prejudice. *See id.* Further, any setoff defendant might receive can be resolved separately if and when such judgment for defendant is entered. *See Prudential Life Ins.*, 626 F.Supp. at 169.

CONCLUSION

Because judicial economy argues for certification, and because the balance of equitable factors supports entry of judgment, this Court GRANTS plaintiffs' motion for entry of final judgment under Rule 54(b), and certifies judgment of plaintiffs' claim in accordance with the summary judgment this court granted on July 21, 1998.

IT IS SO ORDERED.

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